

HOUSE BILL REPORT

HB 1350

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to providing options for local communities to balance growth of the community with water resource goals.

Brief Description: Providing options for local communities to balance growth of the community with water resource goals.

Sponsors: Representatives Chandler and Tharinger.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/7/13, 2/21/13 [DPS].

Brief Summary of Substitute Bill

- Provides county legislative authorities with the discretionary authority to establish groundwater withdraw quantity limits that are lower than 5,000 gallons a day.
- Allows, with exceptions, a local government to utilize a proposed subdivision's use of exempt wells to satisfy the requirement that sufficient potable water is available for the subdivision.
- Provides counties with the discretionary authority to create a limited purpose water bank in counties where the Department of Ecology has closed, or partially closed, a basin to the further appropriation of groundwater.
- Prohibits the Department of Ecology from requiring the metering of exempt wells beyond those that were metered on January 1, 2012.
- Requires all water banks to consider a well's depth and distance from a surface water body when determining the price for new water from a water bank.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Blake, Chair; Chandler, Ranking Minority Member; Haigh, Hurst, Kretz, Pettigrew, Schmick, Van De Wege and Warnick.

Minority Report: Do not pass. Signed by 6 members: Representatives Lytton, Vice Chair; MacEwen, Assistant Ranking Minority Member; Buys, Dunshee, Orcutt and Stanford.

Staff: Jason Callahan (786-7117).

Background:

Groundwater Exempt Wells.

All groundwater withdrawals require an application and permit from the Department of Ecology (Department). Exemptions from this permit include any withdrawal of public groundwater for stock-watering purposes or for watering a lawn or a noncommercial garden of less 0.5 acres.

Single or group domestic uses or industrial purposes in an amount not exceeding 5,000 gallons a day are also exempt. Court rulings have held that group uses are only eligible to withdraw a total of 5,000 gallons per day for the entire group under the applicable exemption.

The Department has exercised authority in certain regions of the state to limit the uses of new exempt wells. This includes Department rules applicable to portions of Skagit, Kittitas, Clallam, and Jefferson counties.

Subdivision Approvals.

The approval or denial of building subdivisions is generally a local government decision. In making that decision, a local government must consider if the public interest is served by the proposed subdivision and whether or not appropriate provisions will be made for public health, safety, the general welfare, and other considerations. One of these considerations is whether the proposed subdivision will have access to sufficient potable water.

Water Banks.

According to the Department, water banking is an institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface, groundwater, and water storage. The term "water banking" is widely used to refer to a variety of water management practices. Water banking is typically facilitated by an institution that operates in the role of broker or clearinghouse. Many banks pool water supplies from willing sellers and make them available as credits to willing buyers.

In 2003 legislation was passed to allow banking in the Yakima Basin using the State Trust Water Program. During the 2009 legislative session, the law was amended to clarify that this tool is available to use for banking statewide.

Summary of Substitute Bill:

Groundwater Exempt Wells.

County legislative authorities are provided with the discretionary authority to establish groundwater withdrawal quantity limits that are lower than 5,000 gallons a day. If a county exercises this option, it must do so through the adoption of an ordinance and may only apply the option to new uses of water related to single or group domestic uses.

The county-established withdraw limit may not be set lower than 350 gallons a day unless there has been a finding by the county that justifies a lower amount that still satisfies the minimum requirements for public health and safety.

Regardless of the actions or inactions of a county legislative authority, the Department is prohibited from requiring withdrawals of groundwater to be metered or measured for exempt wells that were constructed prior to January 1, 2012, for single or group domestic uses unless the well was subject to metering prior to the end of 2011.

Subdivision Approvals.

A local government is expressly authorized to utilize a proposed subdivision's use of exempt wells to satisfy the requirement that sufficient potable water is available for the subdivision. Exempt wells are allowed for this purpose if the total withdraws do not exceed 5,000 gallons of water a day and the wells do not serve as the only source of water available to a project with a footprint greater than 40 acres or to a project greater than 20 acres if the project has available to it another source of water for outdoor uses.

If a proposed subdivision exceeds the 40- or 20-acre limit, then separate exempt wells must be secured to service each additional 40- or 20-acre footprint.

Water Bank.

Counties are given the discretionary authority to create a limited purpose water bank in counties where the Department has closed, or partially closed, a basin to the further appropriation of groundwater. If a water bank is created, it will serve to provide mitigation credits on a one-to-one ratio for existing interruptible or new exempt well groundwater withdrawals. The maximum amount of any mitigation credit must be capped as either 5,000 gallons per day; 350 gallons per day and per residence for group or domestic uses; or an amount less than 350 gallons per day if there has been a finding by the county that justifies a lower amount that still satisfies the minimum requirements for public health and safety.

Any water rights placed in a limited purpose local water bank must be in hydraulic continuity with the groundwater withdrawn by the new user. Any water credits purchased through the local bank must be affixed to a specific parcel of land and are assignable to the title of that land. Transfers of that water right are not allowed.

The county authorizing a local water bank may administer the bank directly or contract with an eligible third party. The cost of administering the water bank may be supported by the county's general fund, real estate excise taxes, or from fees added to the purchase price of a credit from the bank.

Any county-created water bank is required to be managed consistent with a new provision applicable to all water banks. This new requirement directs all water bank managers to

consider, in determining the price that the recipient of a transferred water right must pay in order to participate in a water banking program, the depth of applicant's proposed well and the distance of the proposed well from any surface water bodies.

Substitute Bill Compared to Original Bill:

The original bill did not prohibit the Department from requiring the metering of exempt wells beyond those that were metered on January 1, 2012, and did not require all water banks to consider a well's depth and distance from a surface water body when determining the price to be paid for new water from a water bank.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2013.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is important to work on good faith efforts that manage growth in rural counties without impairing existing water rights. Not doing this means that not all areas of the state can enjoy economic growth. The Washington Supreme Court has placed significant duties on counties to manage water resources, but they have little in the way of tools to do so. This bill offers tools as a first step, not comprehensive solutions, to the counties in their attempts to help people build homes and businesses after they invest in property.

Allowing a county to lower the limit of exempt well withdraws allows more flexibly than the current all-or-nothing model when it comes to slowing the decline of available groundwater. There are some basins that everyone knows are running out of water, but there is no way to slow the decline. However, limits that are too low create quality of life issues. Exempt wells have a tremendous recharge rate.

A local water bank would allow interested counties to ensure waterbudget-neutral future development. The current ambiguity as to group uses of exempt wells is a reality at the permit counter of the various counties. Different counties are subject to different rules when it comes to authorizing permits or new subdivisions. It is confusing for counties to sort out and impossible to know what to tell constituents and permit applicants.

(With concerns) Any permit exemptions must have solid sideboards to ensure that those depending on the water are not left in the lurch. It is important for counties to have clear roles and responsibilities so that they can be water management partners; however, this approach could have administrative costs for the state.

(Opposed) The problems in the state's water supply system cannot be fixed until we have more information about water usage and needs. Having different rules for different counties is just confusing.

Allowing a county to lower the limit of exempt well withdraws can just lead to more confusion since it can cause landowners to believe there is water available when there really is not. Any withdrawal limits are not meaningful if the use is not metered. Any limits on withdrawals must be clear as to whether they deal with indoor or outdoor uses. There could be unintended consequences in the scope of the bill.

Counties can already do water banks, so no new authority is needed. Each basin is very different and the current system is designed to address this reality. Water banks do not need to be delegated to the counties, especially when it is unclear how mitigation credits will be managed to avoid conflicts and if full mitigation to senior water right holders is even required.

There will just be more confusion if there is no limit to the wells that will be covered by the subdivision expansion. This will just continue the problem the Supreme Court tried to rectify and will just move more water from wells into development and water management from the state to local governments that may not feel encumbered by federal treaties. No more water means there is not any more water. A political fix to a physical problem is not a solution.

Persons Testifying: (In support) Representative Chandler, prime sponsor; Laura Merrill, Washington State Association of Counties; Paul Jewell, Kittitas County; John Koster, Snohomish County; David Sauter, Klickitat County; Ron Wesen, Skagit County; and Glen Smith, Washington State Ground Water Association.

(With concerns) Maia Bellon, Department of Ecology.

(Opposed) Dawn Vyvyan, Yakama Nation and Puyallup Tribe; Darcy Nonemacher, Washington Environmental Council; Bruce Wishart, Center for Environment Law & Policy and Sierra Club; Miguel Perez-Gibson, Colville Tribes; Davor Cojuristic, Swinomish Tribe; Steve Robinson, Tulalip and Umatilla Tribes; John Stuhlmiller, Washington Farm Bureau; and Bill Clarke, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.